IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1928.

INTERNATIONAL SHOE COMPANY, a Corporation, (Plaintiff) Appellant, vs. STRATTON SHARTEL, Attorney-General of the State of Missouri, and C. EUGENE STEPHENS, State Treasurer of the State of Missouri, (Defendants) Respondents.	No. 579.

STATEMENT OF BASIS OF JURISDICTION TO REVIEW ON APPEAL INTERLOCUTORY DECREE BELOW.

Comes now International Shoe Company, a corporation, plaintiff and appellant in the above-entitled cause, by Guy A. Thompson, Frank A. Thompson, James D. Williamson and R. E. Blake, its solicitors, and, in compliance with Rule 12 of the Revised Rules of this Honorable Court, shows to the Court that the basis on which it is contended that this Court has jurisdiction to review on appeal the interlocutory decree below is the following, to wit:

This is an appeal from a decree of the United States District Court for the Western District of Missouri denying an application for an interlocutory injunction. The application for interlocutory injunction was heard and denied by a District Court composed of three Judges, one of whom was a Circuit Judge, convened and held pursuant to Section 380, Title 28, United States Code (Judicial Code, Sec. 266, as amended).

(a) The statutory provisions believed to sustain the jurisdiction are United States Code Section 345, Title 28, Chapter 9 (Judicial Code Section 238 as amended by the Act of February 13, 1925, Ch. 229, Section 1, 43 St. at Large 938), providing:

> "A direct review by the Supreme Court of an interlocutory or final judgment or decree of a District Court may be had where it is so provided in the following sections and not otherwise:
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> * * * * * * *
>
> "3. Section 380 of this title,"

and

Section 380, Title 28, United States Code (Judicial Code, Section 266, as amended by Act of March 4, 1913, Chapter 160, 37 St. at Large 1013, and by Act of February 13, 1925, Chapter 229, 43 St. at Large 938), providing:

> "* * * An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. * * *"

(b) The date of the interlocutory decree sought to be reviewed is November 2, 1928 (Rec., p. 67).

The date on which the application for this appeal was presented was November 19, 1928 (Rec., p. 67).

(c) This case was instituted by the International Shoe Company, a Delaware corporation qualified and licensed to do and doing business in the State of Missouri, against the Attorney-General and State Treasurer of said State, in the District Court of the United States, Central Division, Western District of Missouri, to restrain the collection of a franchise tax of $104,220.00 assessed against the International Shoe Company for the year 1928; to restrain the institution of a suit for the recovery of such franchise tax and the collection of a penalty of 25 per cent thereon and interest thereon at the rate of one per cent (1%) per month, as provided by the laws of the State of Missouri; to remove the cloud or lien upon the property and assets of the International Shoe Company within the State of Missouri, created against same by the assessment of said franchise tax, and to have declared unconstitutional Section 12 of the Stock Corporation Act of the State of Missouri as an amendment or supplement to the Corporation Annual Franchise Tax Law of said State, and said Corporation Annual Franchise Tax Law as supplemented and amended by said Section 12 of said Stock Corporation Act, upon the ground that said Section 12 of the Stock Corporation Act as an amendment or supplement to said Corporation Franchise Tax Law and said Corporation Annual

Franchise Tax Law supplemented and amended by Section 12, and the said franchise tax assessed thereunder against appellant (1) deprive appellant of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States; (2) deny appellant equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States; (3) burden interstate and foreign commerce, in violation of Section 8, Article I of the Constitution of the United States (Bill of Complaint, Rec., pp. 1-26, specifically 3-22-23, 27-29).

A statutory court required by Section 380, Title 28, U. S. Code (Section 266 as amended of the United States Judicial Code), consisting of a Circuit Judge and two District Judges, was convened, and, after notice, the prayer of the bill for an interlocutory injunction was presented to and heard by said statutory three-judge court on the 23rd day of October, 1928, all of the parties being present and participating in said presentation (Rec., p. 56).

Thereafter, to wit, on the 2nd day of November, 1928, all of said Judges concurring, said application was denied, and said Judges, on said 2nd day of November, 1928, signed and entered their order denying an interlocutory injunction in said case (Rec., p. 67).

In connection with the entry of said order said Judges filed their written opinion upholding the constitutionality of the aforesaid Section 12 of said Stock Corporation Act, and of the aforesaid Corporation Annual Franchise Tax

Law, particularly of Section 9836 thereof, and of the aforesaid franchise taxes assessed thereunder (Rec., p. 58).

(d) The cases believed to sustain the jurisdiction of this Honorable Court on this appeal are:

Re Buder, 271 U. S. 462;
Airway Electrical Appliance Corporation v. Day, 266 U. S. 1;
St. Louis & Francisco Railroad Co. v. Middlekamp, 256 U. S. 226;
Wallace v. Hines, 253 U. S. 66;
Looney v. Crane Co., 245 U. S. 178;
Rast v. Van Deman and Lewis Co., 240 U. S. 341;
Ohio Tax Cases, 232 U. S. 576.

Respectfully submitted,

GUY A. THOMPSON,
FRANK A. THOMPSON,
JAMES D. WILLIAMSON,
R. E. BLAKE,
Solicitors for Appellant International Shoe Company.